

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HORACE WINFRED CRUMP,

Defendant-Appellant.

UNPUBLISHED

July 29, 1997

No. 195491

Recorder's Court

LC No. 95-004183

Before: Jansen, P.J. and Wahls and P.R. Joslyn*, JJ.

MEMORANDUM.

Defendant appeals by right his bench trial conviction of first degree murder. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant contends that, in rejecting the defense of diminished capacity, the trial court in announcing its findings of fact reflected a misunderstanding of the legal nature of the defense, for which some form of appellate relief should be awarded. A diminished capacity defense is available only where it is shown that a defendant's impairment renders him unable to formulate the specific intent to commit a crime; it is not available where testimony establishes only that defendant could not fully appreciate the consequences of his actions. *People v Flaherty*, 165 Mich App 113, 123-124; 418 NW2d 695 (1987). Here, the expert testimony defendant adduced in support of this defense indicated only that defendant, by virtue of a series of traumatic incidents in his life, reacted in automaton type fashion to the display of a gun by his victim. Defendant's own statement to police similarly indicated that defendant formulated the resolve to physically punish his victim the moment the gun could not be brought to bear against defendant, that he did so first by using a board, and after rendering his victim helpless, finished the job with a knife. If the display of the gun caused defendant to have an irresistible impulse to act as he did, that is a question of legal insanity, not diminished capacity, so any error of the trial court in rejecting the diminished capacity defense was harmless. *People v Jones*, 134 Mich App 371, 373; 350 NW2d 885 (1984).

* Circuit judge, sitting on the Court of Appeals by assignment.

Affirmed.

/s/ Kathleen Jansen

/s/ Myron H. Wahls

/s/ Patrick R. Joslyn